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Lagoon Company, Saltair Beach Company, Cove Gas & Oil Company, Intermountain Theatres, Inc., and Uptown Theatre Corporation v. Utah State Fair Association, Aaron W. Tracy, Rulon S. Howells, Arthur L. Crawford, and Beehive Midways, Inc. : Brief of Respondents

Utah Supreme Court

Louis H. Callister; Beverly S. Glendenin; J. Morris Christensen; Attorneys for Respondents;

7255

Case No. 7255

IN THE SUPREME COURT of the STATE OF UTAH

LAGOON COMPANY, a corporation, SALTAIR BEACH COMPANY, a corporation, COVEY GAS & OIL COMPANY, a partnership, INTER-MOUNTAIN THEATRES, INC., a corporation, and UPTOWN THEATRE CORPORATION, a corporation,

Plaintiffs and Respondents,

vs.

UTAH STATE FAIR ASSOCIATION, a public corporation, and AARON W. TRACY, RULON S. HOWELLS, ARTHUR L. CRAWFORD, comprising the Utah State Board of the Department of Publicity and Industrial Development, and BEEHIVE MIDWAYS, INC., a corporation,

Defendants and Appellants.

BRIEF OF RESPONDENTS

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INDEX

AUTHORITIES CITED

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INTRODUCTORY COMMENTS

Respondents are in accord with the statements of fact as set forth in the appellants' brief. In fact, there was no dispute at the trial of the action as to any issues of fact, but only as to the materiality as to some

presented by the appellants. It was the position of the respondents at the trial that the only question was one of law—*did the Utah State Fair Association have the authority to enter into the lease agreements (Exhibits B and C) with Beehive Midways, Inc?* Respondents are of the opinion that this is the only question to be determined by this Honorable Court, and anything which was done by any parties subsequent to the execution of the agreement is immaterial. If the agreements were beyond the authority of the Utah State Fair Association, then they were void and no acts of the parties could validate them.

Appellants have set forth eight Assignments of Error in their brief, but have not argued them separately. Instead they have divided their argument into six topics. In the interest of convenience and clarity, respondents will endeavor to discuss and answer each of these topics in the order in which they appear in the brief of appellants.

ARGUMENT

I. EXTENT OF POWERS OF MUNICIPALITIES AND STATE AGENCIES.

At the outset, respondents wish to state that they are in accord with the rule of law set forth by the appellants, namely, that a municipality or state agency is limited to those powers expressly granted, to those necessarily or fairly implied or incident to the powers expressly granted, and to those essential to the declared

objects and purposes of the corporation, and that this rule is relaxed when a municipality or governmental agency is not acting in a governmental capacity; however, respondents feel that this foregoing rule of law finds no application in the instant case for the reasons stated hereinafter.

Appellants place great stress upon Utah Code Annotated 1943, 85-4-1, and quote portions of this statute upon page twenty-six of their brief. For the court's convenience, we would like to set forth the entire statute, underlining the portions deleted in appellants' brief, which we consider to be of importance:

> "The Utah state fair association is continued a body corporate with perpetual succession subject to the direction, supervision and control of the commissioners of the department of publicity and industrial development. It may have and use a corporate seal, and by the aforesaid name may sue and be sued, contract and be contracted with, *and take and hold by purchase, gift, devise or bequest, real and personal property required for its uses.* It may also, with the approval of the department of finance, convert such property, when not suitable for its uses, into other property which may be suitable for its uses, into other property, or into money provided, however, that money received from such conversion shall be paid into the state treasury and placed to the credit of the state fair association maintenance fund. The Utah state fair association shall be deemed a public corporation, and its property shall be exempt from all taxes and assessments."

The foregoing statute in granting to the fair association the power to "convert such property," has reference to that property which it might "take and hold by purchase, gift, devise or bequest, real and personal property required for its uses." It does not grant to the fair association the power to convert property acquired under the original grant to the association. Property here involved is a portion of the original grant by the State of Utah to the Utah State Fair Association.

Commencing upon page twenty-seven of Appellants' brief, it is argued that the agreement with Beehive Midways, Inc. does nothing more than convert a portion of the fair grounds to another and more beneficial use, and that the agreement is in effect a mere exchange of different parcels of land. This argument absolutely ignores the terms of the agreement itself. We quote the first sentence of paragraph one of the agreement (Exhibit B):

> "1. That the Company (Beehive Midways, Inc.) shall have the *exclusive right* to operate and license others to operate *all amusement rides, games and shows upon the Utah state fair grounds* during the years 1947, 1948, 1949, 1950 and 1951." (Italics ours)

From the very terms of the agreement itself, Beehive Midways, Inc. is granted the exclusive right to operate all amusement rides, games and shows upon any and all portions of the state fair grounds. Thus, it is seen that the agreement is not a lease for a particular portion of the state fair grounds, but is in the nature

of a franchise or license whereunder Beehive Midways, Inc. is given a monopoly to operate all forms of amusements and shows that are conducted upon the fair grounds.

The lease agreement will further disclose the fact that the Fair Board has actually gone into the amusement business. The lease provides for the Fair Board to receive a percentage of the admission price of all admissions, and one-half of all money paid upon concession space. It further provides that all contracts that may be entered into by the company (Beehive Midways, Inc.) and licensee-concessionaires shall provide that admission fees or charges collected by the concessionaires shall be subject to the approval of the Fair Board and the Company (Beehive Midways, Inc.). The lease agreement further gives the Fair Board the right at its discretion to employ all cashiers for the sale of admission to rides and shows or any percentage concession operated either by the Company (Beehive Midways, Inc.) or its licensees. The lease agreement further provides that the Fair Board shall maintain all rest rooms within the midway (that is, where the bulk of the shows were being held), and shall provide at its own expense (Beehive Midways, Inc.) public liability insurance for the protection of not only the Company (Beehive Midways, Inc.), but the Fair Board against liability arising out of the operation of the midway. It further provides that the Company (Beehive Midways, Inc.) shall be subject to all the rules and regulations published by the Fair

Board for the operation of the Utah State Fair Association.

In determining the extent of the fair association's power in leasing the property entrusted to it, reference must be made to 85-4-7, Utah Code Annotated 1943, which, in the opinion of respondents, is controlling in the instant case. This statute reads as follows:

> "The purpose of the association shall be to promote in the state of Utah stock breeding, agriculture, horticulture, mining, manufacturing, and the domestic sciences and arts; and the association shall have the authority to use and to lease the property of the association, during any portion of the interval between the holding of the annual or biennial exhibitions, for private stock exhibitions, shows, racing meets, and for other legitimate purposes, upon terms and conditions to be prescribed by the board of directors. All moneys received from such leases shall be covered into the state treasury at the end of each month and placed to the credit of the state fair maintenance fund."

Under the terms of this statute the fair association is granted authority to lease property "during any portion of the interval between the holding of the annual or biennial exhibition for private stock exhibitions, shows, racing meets and for other legitimate purposes."

Thus it will be seen that the fair association's power to lease is expressly limited by statute in two particulars—(1) length and period of lease and (2) purposes of the lease.

The lease arrangement in question is in flagrant violation of the first limitation. It is for a five year period with an option for an additional five years. It is for the full term of each year and is not confined to "any portion of the interval between the holding of the annual or biennial exhibition." Statutory authority of public officers must be strictly construed. 46 C. J., Page 1032. This rule is particularly applicable where public officers are granted the authority to alienate state lands or property.

50 C. J., Page 1139;

Taylor v. Balderston (Ida.) 68 P. 2d. 761, 763;

Carpenter v. Okanogan County (Wash.) 299 P. 400.

In *Panama-Pacific International Exposition Company v. Panama Pacific International Exposition Commission* (Cal.) 174 P. 890, the court held that where a public commission is granted power over state property, and the language of the grant contains terms which qualify the power, the qualifications are to be construed as conditions beyond which the grantee of the power cannot go, insofar as such qualifications are favorable to the state.

That the authority of public officers is limited to the terms of the statute conferring such authority is recognized by this court in *Campbell Building Company v. State Road Commission,* 95 Utah 242, 70 P. 2d. 857.

Our legislature has seen fit to limit the leasing power of the fair association to certain intervals, and

the lease agreements under consideration here violate such limitation. The wisdom of such limitation is not for us to decide, but rather for the legislature.

The lease agreements with Beehive Midways, Inc. also violate the second limitation of 85-4-7, Utah Code Annotated 1943, namely the purposes for which the state property may be leased. Under the statute they may lease the property for private stock exhibitions, shows and racing meets. The specific purposes as set forth are then followed by the words "and for other legitimate purposes." The lease agreements under consideration certainly do not fall within any of the specific purposes set forth in the statute, and must be justified, if they can, as falling within the phrase "and for other legitimate purposes." It is the position of the respondents that this last quoted phrase does not enlarge the authority to such an extent as to permit the leasing of the association's property for the purposes of amusement rides, games and shows. The doctrine of ejusdem generis is based on the theory that if the legislature had intended general words to be used in an unrestricted sense, it should have made no mention of particular classes as was done in the instant case.

Bush Terminal Company, 93 Fed. 2d., 659, 660.

Where words of specific and limited significance in a statute are followed by general words of a more comprehensive import, the general words should be construed as embracing only such persons, places or things

as are of like kind or class to those designated by the specific words.

Wiggins v. State, 172 Ind. 78, 84 N.E. 718;

Nichols v. State, 127 Ind. 40, 26 N.E. 839.

In *Hurt v. Oak Downs, Inc.* (Tex.) 85 S.W. 2d., 294, 298, the court stated that under the rule of ejusdem generis, the particular words are presumed to describe certain species, and the general words to be used for the purpose of including other species of the same genus, for the reason that, if the legislature had intended the general words to be used in their unrestricted sense, it would have made no mention of particular classes. The words 'other' or 'any other' following an enumeration of particular classes, are therefore, to be read as 'other such like' and to include only others of a like kind and character.

It is hard, if not impossible, to conceive that amusement rides, games and shows can be 'other such like' as private stock exhibitions, shows and racing meets.

Respondents cannot place too much emphasis upon the provisions of 85-4-7, wherein is set forth the purposes of the Utah State Fair Association. This statute is unequivocal and definite as to what these purposes are. It states that the purpose of the association shall be, "to promote in the State of Utah stock breeding, agriculture, horticulture, mining, manufacturing and the domestic sciences and arts." From these words it is evident that the Utah State Fair Association is a branch

of the state government, created to educate the people regarding agriculture, stock breeding, horticulture, mining, manufacturing and the domestic sciences and arts. It was not created to provide amusement for the people of the State of Utah. In entering into the agreement with Beehive Midways, Inc., the state fair association is departing from its main objective, as set forth in the statute, and is making its education purposes secondary to the amusement business. Contrary to appellants' statement on page thirty of their brief, the Utah State Fair Association was created to promote the general welfare of the people of the State of Utah.

It was stated in *Zoeller v. State Board of Agriculture* (Ky.) 173 S.W. 1143, 1144 as follows:

> " . . . The purpose of the holding of a state fair is to enlighten and educate all the people of the state in regard to the more advanced methods of agriculture, forestry, growing of livestock, and poultry, and to educate the people as to the most profitable kind of livestock to be raised, and the most suitable crops in which to till the soil, and the most advanced methods of doing same. It cannot be successfully contended that the enlightenment and education received by the people at the exhibitions given by the state board of agriculture are any less valuable or the information received there any less worthy of being disseminated by the state government than the education given in the public schools of the state."

In re: *Rhea v. Newman* (Ky.) 156 S.W. 154, 160, the court made the following statement:

> "The state fair is one of the great institutions of the state. It was created for the purpose of improving and educating the people of the state along highly important lines and no one will, or can, successfully contend that the state fair is not one of the most important and essential adjuncts of the state government. In these times of greatly increased population and the consequent increased demands for the products of the soil, no other line of business activity conduces as much to the public prosperity or improved farming methods. In order to keep abreast of the times our farmers must use the most improved methods, and the easiest way to induce them to do this is by causing them to see and thus become interested in what others are doing."

The two foregoing cases clearly set forth the objects and purposes of a state fair association. The same is true of the Utah State Fair Association and is so recognized in the language of the statute itself. The Utah State Fair Association was created for educational purposes, and as such, acts in a governmental capacity as an arm of the state government. Both of the Kentucky cases heretofore quoted from held that the state fair was a *government function.*

The fact that the Utah State Fair Board was created for the purpose of improving and educating the people of this state in regard to more advanced methods of agriculture, growing of livestock, etc., is fundamental. The

further fact that the Utah State Fair Board, by its past operations, has strayed from this highly important purpose has been a subject of public concern. We hope we may have the indulgence of the court in referring to an article which appeared in the Salt Lake Tribune on January 20, 1949, on page 26, which is as follows:

> "FAIRS WANDER FROM GOALS, BUREAU SAYS
>
> "Charging that recent state fairs have strayed from educational to entertainment affairs, fair committee members of the Utah State Farm Bureau federation Wednesday were preparing a request that the fair be returned to its original purpose.
>
> "A committee headed by A. V. Smoot, Corinne, Box Elder county, was named at an earlier meeting to prepare recommendations for preparation to Gov. J. Bracken Lee on ways and means of placing the state fair on an educational basis and assuring agriculture its rightful position at the fair.
>
> "Others named to the committee were Lee Thurgood, Clearfield, representing dairy breeders; Merrill Warnick, Pleasant Grove, Utah, Dairy federation; J. A. Howell, Ogden, state horticultural society, and Alvin Barton, Manti, Sanpete county, livestock interests."

Respondents concede that the Utah State Fair Association may, while holding a biennial exhibition or annual exhibition, provide amusement rides, shows and games for the purpose of attracting people to the state

fair. However, the providing of these amusements, shows and games is only incidental to the main objective, which is education. The Utah State Fair Association was not created to promote amusement or provide profit to the State of Utah, which is certainly the result of the agreement with Beehive Midways, Inc. It is stated in 1 Cal. Jur., page 86, as follows:

> " . . . anything done by the state as to the general conduct of the state fair must necessarily relate to the general public welfare and cannot be construed, in any just sense, as an act for the promotion of business for a profit."

Can it be said that providing the people of the State of Utah with amusement shows and games for a profit in any way relates to the general public welfare? The legislature specifically recognizes the proposition that the educational purposes of the state fair association shall not be subserviant to any other purpose.

In Sec. 85-4-7, the legislature has enumerated the purposes of the association and then specifically limited the authority of the association to lease its property. It limited the leasing of the property to periods during any portion of the interval between the holding of the annual and biennial exhibitions. If the legislature had desired long term leases of the association property, it would have not set forth this limitation.

Thus it will be seen that the authority of the Utah State Fair Association to lease its property is limited to private stock exhibitions, shows, racing meets and things

of a similar genus, and then only for a term during any portion of the interval between the holding of the annual or biennial exhibitions. The agreements with Beehive Midways, Inc. do not fall within the same genus as private stock exhibitions, shows and racing meets and certainly exceed the limitations in the statute relating to the term of any lease.

II. THE STATE FAIR BOARD HAD AUTHORITY TO ENTER INTO THE LEASE AGREEMENT.

Much of the argument contained under this topic has been answered by respondents under the previous topic. In this argument the appellants in their brief again rely upon the proposition that the state fair association has the power to sell, buy or exchange property and, therefore, must have the authority to lease its property. We again invite the court's attention to the agreements themselves, which are not in any sense a lease of the property, but are rather an exclusive franchise or license granted to Beehive Midways, Inc. We would like also to point out again that the state fair association's authority to sell, buy or exchange property relates only to that property acquired since the original grant.

While it might be conceded that often times the power to sell includes the power to lease, we do not think this rule applicable in the instant case inasmuch as the statutes of the State of Utah (85-4-7) expressly limit the power of the state fair association in leasing its property.

Furthermore, while it may be true that under certain circumstances a city or similar entity may determine that its property devoted to a public use is not needed for such use either for a limited time or as part of its acreage and, therefore, can make leases accordingly, this rule is not applicable to the instant case, inasmuch as there is no showing that the property of the state fair association is not needed for a public use. Also, as has been stressed before, the agreements under consideration do not amount to the leasing of a certain portion of the state fair lands, but rather grant to Beehive Midways, Inc. the exclusive right to operate at any time of the year, amusement rides, games and shows on any and all parts of the state fair lands.

Respondents are of the opinion that the agreement under consideration violates the spirit of Article VI, Section 26, Subdivision 16, of the Constitution of the State of Utah, which prohibits the legislature from granting to an individual, association or corporation any privilege, immunity or franchise. The agreements under consideration grant to Beehive Midways, Inc. "the exclusive right to operate and license others to operate all amusement rides, games and shows upon the Utah state fair grounds" for a period of five years. This is certainly in the nature of a special franchise or privilege which the legislature of the State of Utah would be prohibited from granting. If the Utah State Legislature could not grant such a right, it is hard to understand how the Utah State Fair Association, which is an arm of the government, could do so.

III. STATE OFFICERS MAY ENTER INTO CONTRACTS SUCH AS THE LEASE AGREEMENT HERE INVOLVED EXTENDING BEYOND THEIR TERM OF OFFICE.

IV. THE PRESENT STATE FAIR BOARD MAY BIND THEIR SUCCESSORS IN A LEASE CONTRACT SUCH AS THAT HERE INVOLVED.

For convenience, respondents will argue the above two topics together inasmuch as they relate to the same subject matter.

The general rule of law relating to contracts extending beyond the term of public officers is stated in 43 Am. Jur., Page 101, as follows:

> "The power of public officers to enter into contracts which extend beyond the terms of their offices depends primarily upon the extent of their authority under the law. A distinction has been drawn between two classes of powers, — governmental or legislative and proprietary or business. In the exercise of the governmental or legislative powers, a board, in the absence of statutory provision, cannot make a contract extending beyond its own term. But in the exercise of business or proprietary powers, a board may contract as any individual, unless restrained by statutory provision to the contrary. Obviously, contracts extending beyond the terms of the officers executing them will be held invalid where the making of the contracts tends to limit or diminish the efficiency of those who will succeed the incumbents in office or usurps power which was clearly intended to be given to the successors."

The lease and supplemental agreement under consideration extends beyond the term of office of the members of the Utah State Fair Board (See Exhibit E), and certainly would limit and diminish the effeciency of their successors in the performance of their duties. If the lease and supplemental agreement should be held to be valid, then the successors of the present members of the Utah State Fair Board would be bound by their terms and conditions regardless of the necessity of any change of policy, plans or conditions.

As to whether the State Fair Board acts in a governmental or proprietary capacity in leasing the association's property, reference can be made to those cases wherein state fair boards have been sued in tort. In tort actions the general rule is that a governmental agency cannot be held liable if it is acting in a governmental capacity. It has been generally held that state fair boards in conducting state fairs exercise a governmental function. See 52 A. L. R. 1405, 1407. In the case of *Zoeller v. State Board of Agriculture* (Supra), it was held that the Kentucky State Board of Agriculture was an agency of the state and could not be held liable in tort inasmuch as it was acting in a governmental rather than in a private capacity. The Kentucky State Board of Agriculture was a state corporation having the right to sue and be sued. It was not a corporation for a pecuniary profit and was empowered to conduct state fairs. All profits, if any, derived from the conduct of the state fairs were to be paid into the State Treasury. The Kentucky State Board of Agriculture was, in relation to state fairs, in

a similar position to the Utah State Fair Association. The Utah State Fair Association is a governmental agency not formed for a pecuniary profit; it has the right to sue and be sued and is empowered to conduct state fairs.

Thus, using the case of *Zoeller v. Board of Agriculture* as an analogy, the Utah State Fair Association could not be held liable in tort in the exercise of any of its functions inasmuch as such functions are governmental and it could not enter into a contract beyond the terms of the officers for the same reason.

> Moore v. Lucern County, 262 Pa. 216, 105 Atl. 94; Weir v. Day, et al, 35 Ohio St. Ap. 143.

In *Stowe v. Hartford Fair Grounds Association, et al,* 249 Mich. 107, 227 N. W. 702, a twenty-five year lease from the defendant Hartford Fair Grounds Association, a profit corporation, was executed to the defendant, Van Buren County Agricultural and Horticultural Society, a non-profit corporation, at a nominal rental of $1.00 per year. In the course of the opinion the court states:

> "The circuit court judge held that the lease for twenty-five years was void. There was no necessity for giving a lease for this length of time under the conditions as hereinbefore set forth. It amounted practically to a sale of the assets and without any action by the stockholders * * * .
>
> "The evidence in this case shows that the consideration in the least was adequate and proper. However, it might develop during the balance of the term of the corporate franchise or a

> renewal thereof that the agricultural society or some other responsible lessee might be able to run a fair at a profit without any subsidies and exempt from taxation. In that event if a more profitable offer for a lease could be secured the fair association should not be in a position where it would forever be precluded from accepting such offer. The judge was correct in holding that the lease for twenty-five years was void."

Appellants argue that the agreements under consideration were entered into by the state fair association as an exercise of its proprietary functions rather than as an exercise of its governmental functions. With this, of course, the respondents violently disagree. As has previously been pointed out, the fair association is an arm of the government, designed for the purpose of educating the people and, therefore, a governmental function. It was not created for the purpose of providing the state with revenue or profit. In this connection appellants, on page thirty-seven of their brief, admit that the agreements were executed solely for the purpose of raising revenue. This being true, it is certainly outside the scope of the purposes and objectives of the Utah State Fair Association. Appellants feel that all discussion and argument by appellants relating to the Centennial celebration and the Utah Centennial Commission is immaterial and irrelevant. The Utah Centennial Commission was never a party to the agreement.

To the matter in question it is immaterial as to the status of the stockholders of Beehive Midways, Inc. pertaining to recovering back any money which they have

expended. They expended money in an attempt to make a profit solely for their own benefit. Whether they make a profit or not is immaterial in this proceedings.

The agreements under consideration would certainly limit and circumvent successors in office as to their control of future state fairs. If the successors to the present members of the Utah State Fair Association are bound by the terms of these agreements, they would not in the future be able to provide what they might think is the proper form or type of amusement which would be most likely to attract the general public to the state fairs.

V. THE STATE OF UTAH AND ITS FAIR ASSOCIATION IS ESTOPPED FROM QUESTIONING THE VALIDITY OF THE LEASE AGREEMENT, AND THE RESPONDENTS MAY NOT WAIVE SUCH ESTOPPEL.

Respondents find it rather difficult to discuss the proposition set forth in this topic inasmuch as the same is certainly unique. As we follow the argument of the appellants, it is to the effect that the State of Utah cannot question the validity of the agreements because the stockholders of Beehive Midways, Inc. have expended considerable money. Therefore, the State of Utah would be estopped from questioning the validity of the agreements, and this being true, the respondents and the general public are also estopped. We are unable to follow this line of reasoning. Certainly the respondents have done nothing which could be construed as creating an

estoppel which might exist in favor of Beehive Midways, Inc. as against the State of Utah.

If the fair association, in the first instant, did not have the requisite authority to enter into the agreement, then nothing that either the fair association or Beehive Midways, Inc. did thereafter could validate the agreement. The sole question is, did the fair association, under the Utah statutes, have the authority to enter into the agreements? Respondents contend that the answer is definitely in the negative.

As was held in *Campbell Building Company v. State Road Commission,* (Supra) the authority of public officers is limited to the terms of the statute conferring such authority, and any person doing business with the state by way of contract or otherwise, must take notice of the limitations on the authority of the officers or agents of the state.

Furthermore, the issue of estoppel was not raised in the pleadings, and it is a settled rule of law in this jurisdiction that a party, in order to avail itself of the defense of estoppel, must plead the same.

> Campbell v. Nunn (Utah) 2 P. 2d 899; Barber v. Anderson (Utah) 274 P. 136.

Respondents also doubt that the question of estoppel, even though properly pleaded, could be raised in this type of action. The action is for a declaratory judgment wherein the court is asked to make an interpretation of a contract and declare it either valid or void. It would

seem that any qu[illegible]on of estoppel would be premature until such time as the validity of the contract had been denied or upheld.

VI. THE TRIAL COURT ERRED IN DENYING PETITION OF CENTENNIAL COMMISSION LEAVE TO INTERVENE IN THE CAUSE.

As has been previously pointed out in this brief, the Centennial Commission was not a party to the lease agreements. It, together with various other state agencies, including the attorney general's office, approved the supplemental agreement, but was not bound as a party to this agreement. Furthermore, the Centennial Commission, by statute, terminates on July 24, 1949, and the lease agreements, according to their terms, are to remain in effect until 1951, with an option for an additional five years.

The Centennial Commission filed with the lower court a petition for leave to intervene, together with a proposed complaint. The trial court, taking into consideration the fact that the Centennial Commission was not a party to the agreements, and the fact that it would go out of existence on July 24, 1949, denied the petition to intervene. The appellants did not join with the Centennial Commission in petitioning for intervention and are, therefore, not a proper party to raise this issue upon appeal. If it could be considered that the trial court erred in denying the Centennial Commission's petition to inter-

vene, then such error could only be ealed by the Centennial Commission itself.

Appellants filed with the lower court a supplemental answer (Tr. 39-47), wherein the powers and duties of the Centennial Commission were set forth, and the court was requested to direct the plaintiffs to make the Centennial Commission a party to the proceeding. The trial court denied this prayer, again taking into consideration the fact that the Centennial Commission was not a party to the contract, and further, that the Centennial Commission would be out of existence during the greater portion of the life of the agreement.

The interest which the Centennial Commission had in this action was no greater than that of any private citizen of the State of Utah or any other state agency. In fact it was less in view of the fact that the commission was to be terminated on July 24, 1949. Respondents contend that the trial court did not abuse its discretion in refusing appellants' request to make the Centennial Commission a party to the action. The rule relating to necessary parties in an action for declaratory relief is stated in 16 Am. Jur., Page 330, as follows:

> "The general rule that all persons interested in the controversy must be parties to an action for declaratory relief requires that, ordinarily, all interested persons who are not plaintiffs be made defendants. The rule is not, however, mandatory in every case and does not preclude the exercise of the discretion of a court of equity as to who are necessary parties, especially where

the statute involved provides, as does the uniform act, that no declaration shall prejudice the rights of persons not parties."

CONCLUSION

In conclusion, respondents submit that the decision of the trial court, holding the lease agreements between the Utah State Fair Association and Beehive Midways, Inc., invalid, should be sustained for the following reasons as argued in this brief:

1. The lease agreements exceed the limitations of the fair association's leasing power as set forth and defined in 85-4-7, Utah Code Annotated 1943, in that said agreements are for a longer period of time than that permitted under the statute, and that they are for a purpose not permitted for under the statute.

2. The lease agreements are void for the reason that they are for a period of time in excess of the terms of office of the members of the Utah State Fair Board.

Respectfully submitted,

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